



January 29, 2016

SENATE BILL No. 344

DIGEST OF SB 344 (Updated January 27, 2016 9:42 pm - DI 51)

Citations Affected: IC 22-2; IC 22-9; IC 22-9.5; IC 34-13; IC 34-28; noncode.

Synopsis: Civil rights. Prohibits discriminatory practices in acquisition or sale of real estate, housing, education, public accommodations, employment, the extending of credit, and public contracts based on military active duty status, or sexual orientation. Provides protections for religious liberty and conscience. Limits the adoption of a civil rights ordinance after December 31, 2015, that applies to a class of persons not covered by state law. Permits local civil rights agencies to order the employment of a veteran. Provides that the changes in the act to the civil rights law and the fair housing law are nonseverable. Provides that a court is to use the material burden analysis in reviewing certain claims involving religion, thought, speech, and assembly. Repeals the substantially burden of religion analysis in reviewing certain claims involving government action.

Effective: Upon passage; January 1, 2016 (retroactive).

Holdman, Hershman

January 7, 2016, read first time and referred to Committee on Rules & Legislative Procedure.

January 28, 2016, amended, reported favorably — Do Pass.

SB 344—LS 7016/DI 51



January 29, 2016

Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

SENATE BILL No. 344

A BILL FOR AN ACT to amend the Indiana Code concerning civil rights.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 22-2-16-4, AS ADDED BY P.L.205-2013,
2 SECTION 336, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JANUARY 1, 2016 (RETROACTIVE)]: Sec. 4. Nothing
4 in this chapter shall be construed to prohibit a city, town, or county
5 from ~~adopting~~ **enforcing** an ordinance ~~that was adopted~~ under
6 IC 22-9-1-12.1 **before January 1, 2016, relating and relates** to a
7 category or class in addition to the categories and classes described in
8 IC 22-9-1-2.
9 SECTION 2. IC 22-9-1-0.2 IS ADDED TO THE INDIANA CODE
10 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
11 UPON PASSAGE]: **Sec. 0.2. The provisions in this chapter,**
12 **IC 22-9.5, and IC 22-2-16-4 enacted in SEA 344-2016 by SEA**
13 **344-2016 are the result of the general assembly's balancing of**
14 **differing religious values and matters of conscience so that**
15 **individuals of good faith can live and work together without undue**
16 **litigation or burden. The exemptions to this chapter and IC 22-9.5**
17 **related to or affecting sexual orientation are to be liberally**

SB 344—LS 7016/DI 51



1 construed. For the purposes of IC 1-1-1-8 and any other purpose,
 2 if any amendment or addition to the Indiana Code made to this
 3 chapter, IC 22-9.5, or IC 22-2-16-4 by SEA 344-2016, or any part
 4 of any amendment or addition to the Indiana Code made to this
 5 chapter, IC 22-9.5, or IC 22-2-16-4 is held invalid, all of the
 6 additions and amendments to the Indiana Code made by SEA
 7 344-2016 to this chapter, IC 22-9.5, and IC 22-2-16-4 are void.

8 SECTION 3. IC 22-9-1-1.2 IS ADDED TO THE INDIANA CODE
 9 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 10 UPON PASSAGE]: Sec. 1.2. (a) As used in this section,
 11 "discriminatory action" means any action taken by the state or a
 12 political subdivision, including the following:

13 (1) Negatively altering the tax treatment of any person,
 14 causing any tax, penalty, or payment to be assessed against
 15 any person, or delaying, revoking, or otherwise making
 16 unavailable or denying to any person an exemption from
 17 taxation.

18 (2) Disallowing or otherwise making unavailable or denying
 19 a deduction for state or political subdivision tax purposes of
 20 any charitable contribution made to or by any person.

21 (3) Withholding, reducing, excluding, terminating, materially
 22 altering the terms or conditions of, or otherwise making
 23 unavailable or denying any state grant, contract, subcontract,
 24 cooperative agreement, or loan from or to any person.

25 (4) Withholding, reducing, excluding, terminating, materially
 26 altering the terms or conditions of, or otherwise making
 27 unavailable or denying any accreditation, licensing, custody
 28 award or agreement, recognition, or certification from or to
 29 any person.

30 (b) As used in this chapter, "political subdivision" means a
 31 political subdivision (as defined in IC 36-1-2-13) or other local
 32 governmental entity. The term includes the whole or any part of a
 33 branch, department, agency, or instrumentality of a political
 34 subdivision or other local governmental body, including a body
 35 politic, a body corporate and politic, or any other similar entity
 36 established by law.

37 (c) As used in this chapter, "state" includes the whole or any
 38 part of a branch, department, agency, or instrumentality of state
 39 government, including a state educational institution, a body
 40 politic, a body corporate and politic, or any other similar entity
 41 established by law.

42 (d) As used in this chapter, "religious or religious affiliated



organization" means a church or other religious organization, association, or society, a nonprofit institution or other nonprofit organization operated, supervised, or controlled by or in conjunction with a church or other religious organization, association, or society, or an interdenominational, a nondenominational, or other educational nonprofit organization that is independent from the operation, supervision, or control by a church or other religious organization, association, or society but is organized with one (1) primary purpose to encourage students to incorporate a religious point of view in the academic and practical activities of students and graduates. The term includes the following if the entities meet the definition of religious or religious affiliated organization provided in this subsection:

(1) An adoption agency.

(2) A nonprofit school (including a higher education institution).

(3) A nonprofit day care facility or service.

(e) The following are exempt from the provisions of this chapter and IC 22-9.5 concerning sexual orientation:

(1) A religious or religious affiliated organization.

(2) A rabbi, priest, preacher, minister, pastor, or designee of a religious or religious affiliated organization when the individual is engaged in a religious or religious affiliated educational function of the religious or religious affiliated organization.

(f) It is against the public policy of the state for the state or any political subdivision to take any action inconsistent with the restrictions placed upon the state or its political subdivisions, or both, by the Constitution of the United States, the Constitution of the State of Indiana, or IC 34-13-9 against any individual clergy, religious leader, or religious or religious affiliated organization on the basis that the person believes or sincerely acts in accordance with a religious belief or matters of conscience regarding marriage.

The actions prohibited by this section include the following:

(1) The state and its political subdivisions may not take any discriminatory action against any individual clergy or religious leader on the basis that the individual declines or will decline to perform, solemnize, or facilitate any marriage based upon the individual's sincerely held religious belief.

(2) The state and its political subdivisions may not take any discriminatory action against a religious or religious affiliated organization, including those providing social services, wholly



or partially on the basis that the organization declines or will decline to solemnize any marriage or to provide accommodations or other facilities, goods or other property, privileges, or services for a purpose related to the solemnization, formation, celebration, or recognition of any marriage, based upon a sincerely held religious belief.

(3) The state and its political subdivisions may not take any discriminatory action against a religious or religious affiliated organization that provides social services or charitable services, if the organization acts or intends to act upon a sincerely held religious belief.

(g) A person, other than an employer (as defined in section 3 of this chapter), is exempt from the provisions of this chapter related to sexual orientation for the following:

(1) An act or omission related to providing accommodations or other facilities, goods or other property, privileges, or services for any solemnization, rehearsal, reception, celebration, or social event for a marriage ceremony, renewal of marriage vows, or marriage anniversary.

(2) An act or omission related to providing marriage counseling, courses, retreats, and other similar activities.

(h) A person providing adoption services or crisis pregnancy services, organized with the primary purpose to encourage the carrying of pregnancies to full term, is exempt from the provisions of this chapter related to sexual orientation.

(i) A nonprofit corporation or association organized with the primary purpose of offering religious-centered programs is exempt from the provisions of this chapter related to sexual orientation.

SECTION 4. IC 22-9-1-2, AS AMENDED BY P.L.136-2014, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) It is the public policy of the state to provide all of its citizens equal opportunity for education, employment, access to public conveniences and accommodations, and acquisition through purchase or rental of real property, including but not limited to housing, and to eliminate segregation or separation based solely on race, religion, color, sex, disability, national origin, **sexual orientation, active duty status, veteran status**, or ancestry, since such segregation is an impediment to equal opportunity. Equal education and employment opportunities and equal access to and use of public accommodations and equal opportunity for acquisition of real property are hereby declared to be civil rights.

(b) The practice of denying these rights to properly qualified



persons by reason of the race, religion, color, sex, disability, national origin, **sexual orientation, active duty status, veteran status**, or ancestry of such person is contrary to the principles of freedom and equality of opportunity and is a burden to the objectives of the public policy of this state and shall be considered as discriminatory practices. The promotion of equal opportunity without regard to race, religion, color, sex, **sexual orientation, active duty status, veteran status**, disability, national origin, or ancestry through reasonable methods is the purpose of this chapter.

(c) It is also the public policy of this state to protect employers, labor organizations, employment agencies, property owners, real estate brokers, builders, ~~and~~ lending institutions, **and other persons** from unfounded charges of discrimination.

(d) It is hereby declared to be contrary to the public policy of the state and an unlawful practice for any person, for profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, religion, color, sex, disability, national origin, **sexual orientation, active duty status, veteran status**, or ancestry.

(e) The general assembly recognizes that on February 16, 1972, there are institutions of learning in Indiana presently and traditionally following the practice of limiting admission of students to males or to females. It is further recognized that it would be unreasonable to impose upon these institutions the expense of remodeling facilities to accommodate students of both sexes, and that educational facilities of similar quality and type are available in coeducational institutions for those students desiring such facilities. It is further recognized that this chapter is susceptible of interpretation to prevent these institutions from continuing their traditional policies, a result not intended by the general assembly. Therefore, the amendment effected by Acts 1972, P.L.176, is desirable to permit the continuation of the policies described.

(f) It is against the public policy of the state and a discriminatory practice for an employer to discriminate against a prospective employee on the basis of status as a veteran by:

- (1) refusing to employ an applicant for employment on the basis that the applicant is a veteran of the armed forces of the United States; or
- (2) refusing to employ an applicant for employment on the basis that the applicant is a member of the Indiana National Guard or member of a reserve component.



(g) This chapter shall be construed broadly to effectuate its purpose.

SECTION 5. IC 22-9-1-3, AS AMENDED BY P.L.136-2014, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this chapter:

(a) "Person" means one (1) or more individuals, partnerships, associations, organizations, limited liability companies, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers, and other organized groups of persons.

(b) "Commission" means the civil rights commission created under section 4 of this chapter.

(c) "Director" means the director of the civil rights commission.

(d) "Deputy director" means the deputy director of the civil rights commission.

(e) "Commission attorney" means the deputy attorney general, such assistants of the attorney general as may be assigned to the commission, or such other attorney as may be engaged by the commission.

(f) "Consent agreement" means a formal agreement entered into in lieu of adjudication.

(g) "Affirmative action" means those acts that the commission determines necessary to assure compliance with the Indiana civil rights law.

(h) "Employer" means the state or any political or civil subdivision thereof and any person employing six (6) or more persons within the state, except that the term "employer" does not include:

(1) any nonprofit corporation or association organized exclusively for fraternal or religious purposes;

(2) any school, educational, or charitable religious institution owned or conducted by or affiliated with a church or religious institution; or

(3) any exclusively social club, corporation, or association that is not organized for profit.

(i) "Employee" means any person employed by another for wages or salary. However, the term does not include any individual employed:

(1) by the individual's parents, spouse, or child; or

(2) in the domestic service of any person.

(j) "Labor organization" means any organization that exists for the purpose in whole or in part of collective bargaining or of dealing with employers concerning grievances, terms, or conditions of employment or for other mutual aid or protection in relation to employment.

(k) "Employment agency" means any person undertaking with or



without compensation to procure, recruit, refer, or place employees.

(l) "Discriminatory practice" means:

(1) the exclusion of a person from equal opportunities because of race, religion, color, sex, **sexual orientation**, disability, national origin, ancestry, **active duty status**, or ~~status as a veteran status~~;

(2) a system that excludes persons from equal opportunities because of race, religion, color, sex, **sexual orientation**, disability, national origin, ancestry, **active duty status**, or ~~status as a veteran status~~;

(3) the promotion of racial segregation or separation in any manner, including but not limited to the inducing of or the attempting to induce for profit any person to sell or rent any dwelling by representations regarding the entry or prospective entry in the neighborhood of a person or persons of a particular race, religion, color, sex, **sexual orientation**, disability, national origin, ~~or~~ ancestry, **active duty status, or veteran status**; or

(4) a violation of IC 22-9-5 that occurs after July 25, 1992, and is committed by a covered entity (as defined in IC 22-9-5-4).

Every discriminatory practice relating to the acquisition or sale of real estate, education, public accommodations, employment, or the extending of credit (as defined in IC 24-4.5-1-301.5) shall be considered unlawful unless it is specifically exempted by this chapter.

(m) "Public accommodation" means any establishment that caters or offers its services or facilities or goods to the general public.

(n) "Complainant" means:

(1) any individual charging on the individual's own behalf to have been personally aggrieved by a discriminatory practice; or

(2) the director or deputy director of the commission charging that a discriminatory practice was committed against a person (other than the director or deputy director) or a class of people, in order to vindicate the public policy of the state (as defined in section 2 of this chapter).

(o) "Complaint" means any written grievance that is:

(1) sufficiently complete and filed by a complainant with the commission; or

(2) filed by a complainant as a civil action in the circuit or superior court having jurisdiction in the county in which the alleged discriminatory practice occurred.

The original of any complaint filed under subdivision (1) shall be signed and verified by the complainant.

(p) "Sufficiently complete" refers to a complaint that includes:

(1) the full name and address of the complainant;



(2) the name and address of the respondent against whom the complaint is made;

(3) the alleged discriminatory practice and a statement of particulars thereof;

(4) the date or dates and places of the alleged discriminatory practice and if the alleged discriminatory practice is of a continuing nature the dates between which continuing acts of discrimination are alleged to have occurred; and

(5) a statement as to any other action, civil or criminal, instituted in any other form based upon the same grievance alleged in the complaint, together with a statement as to the status or disposition of the other action.

No complaint shall be valid unless filed within one hundred eighty (180) days from the date of the occurrence of the alleged discriminatory practice.

(q) "Sex" as it applies to segregation or separation in this chapter applies to all types of employment, education, public accommodations, and housing. However:

(1) it shall not be a discriminatory practice to maintain separate restrooms;

(2) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor management committee controlling apprenticeship or other training or retraining programs to admit or employ any other individual in any program on the basis of sex in those certain instances where sex is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; and

(3) it shall not be a discriminatory practice for a private or religious educational institution to continue to maintain and enforce a policy of admitting students of one (1) sex only.

(r) "Disabled" or "disability" means the physical or mental condition of a person that constitutes a substantial disability. In reference to employment under this chapter, "disabled or disability" also means the physical or mental condition of a person that constitutes a substantial disability unrelated to the person's ability to engage in a particular occupation.

(s) "Veteran" means:

(1) a veteran of the armed forces of the United States;



(2) a member of the Indiana National Guard; or

(3) a member of a reserve component.

(t) "Active duty" has the meaning set forth in IC 22-9-9-1.

(u) "Sexual orientation" means actual or perceived bisexuality, heterosexuality, or homosexuality.

SECTION 6. IC 22-9-1-6, AS AMENDED BY P.L.136-2014, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) The commission shall establish and maintain a permanent office in the city of Indianapolis.

(b) Except as it concerns judicial review, the commission may adopt rules under IC 4-22-2 to implement this chapter.

(c) The commission shall formulate policies to effectuate the purposes of this chapter and make recommendations to agencies and officers of the state or local subdivisions thereof to effectuate such policies. The several departments, commissions, divisions, authorities, boards, bureaus, agencies, and officers of the state or any political subdivision or agency thereof shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any matter before the commission.

(d) The commission shall receive and investigate complaints alleging discriminatory practices. The commission shall not hold hearings in the absence of a complaint. All investigations of complaints shall be conducted by staff members of the civil rights commission or their agents.

(e) The commission may create such advisory agencies and conciliation councils, local or statewide, as will aid in effectuating the purposes of this chapter. The commission may itself, or it may empower these agencies and councils to:

(1) study the problems of discrimination in the areas covered by section 2 of this chapter when based on race, religion, color, sex, ~~handicap~~, **sexual orientation, disability**, national origin, **active duty status, veteran status**, or ancestry; and

(2) foster through community effort, or otherwise, good will among the groups and elements of the population of the state.

These agencies and councils may make ~~recommendation~~ **recommendations** to the commission for the development of policies and procedures in general. Advisory agencies and conciliation councils created by the commission shall be composed of representative citizens serving without pay, but with reimbursement for reasonable and necessary actual expenses.

(f) The commission may issue such publications and such results of investigations and research as in its judgment will tend to promote



1 good will and minimize or eliminate discrimination because of race,
 2 religion, color, sex, ~~handicap~~, **sexual orientation, disability**, national
 3 origin, **active duty status, veteran status**, or ancestry.

4 (g) The commission shall prevent any person from discharging,
 5 expelling, or otherwise discriminating against any other person because
 6 the person filed a complaint, testified in any hearing before this
 7 commission, or in any way assisted the commission in any matter under
 8 its investigation. **The commission shall establish policies and**
 9 **procedures to protect employers, labor organizations, employment**
 10 **agencies, property owners, real estate brokers, builders, lending**
 11 **institutions, and other persons from unfounded charges of**
 12 **discrimination. The commission shall enforce sections 1.2(f), 10(b),**
 13 **and 19 of this chapter to protect the rights of individuals to**
 14 **religious belief and conscience.**

15 (h) The commission may hold hearings, subpoena witnesses, compel
 16 their attendance, administer oaths, take the testimony of any person
 17 under oath, and require the production for examination of any books
 18 and papers relating to any matter under investigation or in question
 19 before the commission. The commission may make rules as to the
 20 issuance of subpoenas by individual commissioners. Contumacy or
 21 refusal to obey a subpoena issued under this section shall constitute a
 22 contempt. All hearings shall be held within Indiana at a location
 23 determined by the commission. A citation of contempt may be issued
 24 upon application by the commission to the circuit or superior court in
 25 the county in which the hearing is held or in which the witness resides
 26 or transacts business.

27 (i) The commission may appoint administrative law judges other
 28 than commissioners, when an appointment is deemed necessary by a
 29 majority of the commission. The administrative law judges shall be
 30 members in good standing before the bar of Indiana and shall be
 31 appointed by the chairman of the commission. An administrative law
 32 judge appointed under this subsection shall have the same powers and
 33 duties as a commissioner sitting as an administrative law judge.
 34 However, the administrative law judge may not issue subpoenas.

35 (j) The commission shall state its findings of fact after a hearing
 36 and, if the commission finds a person has engaged in an unlawful
 37 discriminatory practice, shall cause to be served on this person an order
 38 requiring the person to cease and desist from the unlawful
 39 discriminatory practice and requiring the person to take further
 40 affirmative action as will effectuate the purposes of this chapter,
 41 including but not limited to the power:

42 (1) to restore complainant's **actual** losses incurred as a result of



discriminatory treatment, as the commission may deem necessary to assure justice, however, except in discriminatory practices involving veterans, this specific provision when applied to orders pertaining to employment shall include only wages, salary, or commissions;

(2) to require the posting of notice setting forth the public policy of Indiana concerning civil rights and respondent's compliance with the policy in places of public accommodations;

(3) to require proof of compliance to be filed by respondent at periodic intervals; and

(4) to require a person who has been found to be in violation of this chapter and who is licensed by a state agency authorized to grant a license to show cause to the licensing agency why the person's license should not be revoked or suspended.

When an employer has been found to have committed a discriminatory practice in employment by failing to employ an applicant on the basis that the applicant is a veteran, the order to restore the veteran's losses may include placing the veteran in the employment position with the employer for which the veteran applied. **Otherwise, damages to be paid as a result of discriminatory practices relating to employment are limited to lost wages, salaries, commissions, or fringe benefits.**

(k) Judicial review of a cease and desist order or other affirmative action as referred to in this chapter may be obtained under IC 22-9-8. If no proceeding to obtain judicial review is instituted within thirty (30) days from receipt of notice by a person that an order has been made by the commission, the commission, if it determines that the person upon whom the cease and desist order has been served is not complying or is making no effort to comply, may obtain a decree of a court for the enforcement of the order in circuit or superior court upon showing that the person is subject to the commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought.

(l) If, upon all the evidence, the commission shall find that a person has not engaged in any unlawful practice or violation of this chapter, the commission shall state its findings of facts and shall issue and cause to be served on the complainant an order dismissing the complaint as to the person.

(m) The commission may furnish technical assistance requested by persons subject to this chapter to further compliance with this chapter or with an order issued thereunder.

(n) The commission shall promote the creation of local civil rights agencies to cooperate with individuals, neighborhood associations, and



1 state, local, and other agencies, both public and private, including
2 agencies of the federal government and of other states.

3 (o) The commission may reduce the terms of conciliation agreed to
4 by the parties to writing (to be called a consent agreement) that the
5 parties and a majority of the commissioners shall sign. When signed,
6 the consent agreement shall have the same effect as a cease and desist
7 order issued under subsection (j). If the commission determines that a
8 party to the consent agreement is not complying with it, the
9 commission may obtain enforcement of the consent agreement in a
10 circuit or superior court upon showing that the party is not complying
11 with the consent agreement and the party is subject to the commission's
12 jurisdiction and resides or transacts business within the county in
13 which the petition for enforcement is brought.

14 (p) In lieu of investigating a complaint and holding a hearing under
15 this section, the commission may issue an order based on findings and
16 determinations by the federal Department of Housing and Urban
17 Development or the federal Equal Employment Opportunity
18 Commission concerning a complaint that has been filed with one (1) of
19 these federal agencies and with the commission. The commission shall
20 adopt by rule standards under which the commission may issue such an
21 order.

22 (q) Upon notice that a complaint is the subject of an action in a
23 federal court, the commission shall immediately cease investigation of
24 the complaint and may not conduct hearings or issue findings of fact or
25 orders concerning that complaint.

26 SECTION 7. IC 22-9-1-10 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. **(a) Subject to**
28 **subsection (b), every contract to which the state or any of its political**
29 **or civil subdivisions is a party, including franchises granted to public**
30 **utilities, shall contain a provision requiring the contractor and his the**
31 **contractor's subcontractors not to discriminate against any employee**
32 **or applicant for employment to be employed in the performance of such**
33 **contract, with respect to his the employee's or applicant's hire, tenure,**
34 **terms, conditions or privileges of employment or any matter directly or**
35 **indirectly related to employment, because of his the employee's or**
36 **applicant's race, religion, color, sex, sexual orientation (for**
37 **contracts with an employer entered into, modified, or renewed**
38 **after March 31, 2016), disability, national origin, active duty status**
39 **(for contracts with an employer entered into, modified, or renewed**
40 **after March 31, 2016), veteran status (for contracts with an**
41 **employer entered into, modified, or renewed after March 31,**
42 **2016), or ancestry. Breach of this covenant may be regarded as a**



1 material breach of the contract.

2 **(b) This subsection applies to a contract entered into, modified,**
 3 **or renewed by the state or any of its political subdivisions after**
 4 **March 31, 2016, with a religious or religious affiliated**
 5 **organization. The contract must include a modification to the**
 6 **provision required under subsection (a) that neither the entity nor**
 7 **its subcontractors are prohibited from:**

8 **(1) giving a preference in employment to individuals of a**
 9 **particular religion; or**

10 **(2) requiring that all employees and applicants conform to the**
 11 **religious tenets of the organization;**
 12 **to the extent permitted under Executive Order 13279 or Title VII**
 13 **of the federal Civil Rights Act of 1964, as amended (42 U.S.C.**
 14 **2000e et seq.).**

15 SECTION 8. IC 22-9-1-11 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. In addition to
 17 its power to investigate the discriminatory practices referred to in this
 18 chapter, the commission may receive written complaints of violation of
 19 this chapter or other discriminatory practices based upon race, religion,
 20 color, sex, **sexual orientation, disability**, national origin, **active duty**
 21 **status, veteran status**, or ancestry and to investigate such complaints
 22 as it deems meritorious, or ~~to~~ conduct such investigation in the absence
 23 of complaints whenever it deems it in the public interest. ~~It~~ **The**
 24 **commission** may transmit to the general assembly its recommendations
 25 for legislation designed to aid in the removing of such discrimination.

26 SECTION 9. IC 22-9-1-12.1, AS AMENDED BY P.L.2-2007,
 27 SECTION 307, IS AMENDED TO READ AS FOLLOWS
 28 [EFFECTIVE JANUARY 1, 2016 (RETROACTIVE)]: Sec. 12.1. (a)
 29 As used in this section, the term "state agency" means:

30 (1) every office, officer, board, commission, department, division,
 31 bureau, committee, fund, **or** agency; and

32 (2) without limitation by reason of any enumeration in this
 33 section:

34 (A) every other instrumentality of the state, every hospital,
 35 every penal institution, and every other institutional enterprise
 36 and activity of the state, wherever located;

37 (B) the state educational institutions; and

38 (C) the judicial department of the state.

39 "State agency" does not mean counties, county offices of family and
 40 children, cities, towns, townships, school corporations (as defined in
 41 IC 20-18-2-16), or other municipal corporations, political subdivisions,
 42 or units of local government.



(b) Any city, town, or county ~~is hereby authorized to~~ **may** adopt an ordinance or ordinances ~~which may include establishment or designation of~~ **to establish or designate** an appropriate local commission, office, or agency to effectuate within its territorial jurisdiction ~~the public policy of the state as declared in section 2 of this chapter.~~ **article or IC 22-9.5, or both,** without conflict with any of the provisions of this ~~chapter~~ **article or IC 22-9.5. Ordinances adopted after December 31, 2015, and ordinance amendments adopted after December 31, 2015:**

(1) **are void to the extent that they apply to a class of persons not protected in this article or IC 22-9.5, a class of acts or omissions not prohibited under this article or IC 22-9.5, or persons, acts, or omissions exempted or otherwise excluded from the application of this article or IC 22-9.5; and**

(2) **may not authorize or impose an infraction, a fine, or a civil penalty for discrimination against or segregation of a person in a class of persons that is not protected in this article or IC 22-9.5.**

This subsection does not prohibit enforcement of ordinances adopted before January 1, 2016, or technical corrections after December 31, 2015, to ordinances adopted before January 1, 2016. Any city or town may adopt such an ordinance or ordinances **permitted under this subsection** jointly with any other city or town located in the same county or jointly with that county. A city ordinance that establishes a local commission may provide that the members of the commission are to be appointed solely by the city executive or solely by the city legislative body or may provide for a combination of appointments by the city executive and the city legislative body. The board of commissioners of each county is also authorized to adopt ordinances in accordance with this section. An agency established or designated under this section has no jurisdiction over the state or any of its agencies.

(c) An ordinance adopted under this section may grant to the local agency the power to:

- (1) investigate, conciliate, and hear complaints;
- (2) subpoena and compel the attendance of witnesses or production of pertinent documents and records;
- (3) administer oaths;
- (4) examine witnesses;
- (5) appoint hearing examiners or panels;
- (6) make findings and recommendations;
- (7) issue cease and desist orders or orders requiring remedial



1 action, **including, if an employer has been found to have**
 2 **committed a discriminatory practice in employment by failing**
 3 **to employ an applicant on the basis that the applicant is a**
 4 **veteran, order placement of the veteran in the employment**
 5 **position with the employer for which the veteran applied;**

6 (8) order payment of actual damages, except that damages to be
 7 paid as a result of discriminatory practices relating to employment
 8 shall be limited to lost wages, salaries, commissions, or fringe
 9 benefits;

10 (9) institute actions for appropriate legal or equitable relief in a
 11 circuit or superior court;

12 (10) employ an executive director and other staff personnel;

13 (11) adopt rules and regulations;

14 (12) initiate complaints, except that no person who initiates a
 15 complaint may participate as a member of the agency in the
 16 hearing or disposition of the complaint; and

17 (13) conduct programs and activities to carry out the public policy
 18 of the state, as provided in section 2 of this chapter, within the
 19 territorial boundaries of a local agency.

20 (d) Any person who files a complaint with any local agency may not
 21 also file a complaint with the civil rights commission concerning any
 22 of the matters alleged in such complaint, and any person who files a
 23 complaint with the civil rights commission may not also file a
 24 complaint with any local agency concerning any of the matters alleged
 25 in such complaint. Any complaint filed with the commission may be
 26 transferred by the commission to any local agency having jurisdiction.
 27 The local agency shall proceed to act on the complaint as if it had been
 28 originally filed with the local agency as of the date that the complaint
 29 was filed with the commission. Any complaint filed with a local agency
 30 may be transferred by the local agency to the commission if the
 31 commission has jurisdiction. The commission shall proceed to act on
 32 the complaint as if it had been originally filed with the commission as
 33 of the date that the complaint was filed with the local agency. Nothing
 34 in this subsection shall affect such person's right to pursue any and all
 35 other rights and remedies available in any other state or federal forum.

36 (e) A decision of the local agency may be appealed under the terms
 37 of IC 4-21.5 the same as if it was a decision of a state agency.

38 (f) **Local agencies and ordinances described in this section that**
 39 **are adopted before, on, or after January 1, 2016, must establish**
 40 **policies and procedures, to:**

41 (1) **protect employers, labor organizations, employment**
 42 **agencies, property owners, real estate brokers, builders,**



lending institutions, and other persons from unfounded charges of discrimination; and
 (2) enforce sections 1.2(f), 10(b), and 19 of this chapter to protect the rights of individuals to religious belief and conscience.

SECTION 10. IC 22-9-1-19 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 19. (a) The state and a political subdivision may not:**

- (1) fail or refuse to issue or renew a permit, registration, certificate, or other license that the state or political subdivision is authorized to issue;
- (2) suspend or revoke a permit, registration, certificate, or other license that the state or political subdivision is authorized to issue; or
- (3) otherwise impose a disciplinary action on the holder of a permit, registration, certificate, or other license that the state or political subdivision is authorized to regulate;

based solely on a person's lawful expression or lawful activity regarding marriage or sexual orientation or the lawful expression or lawful activity of the person's employees, owners, or agents (if any) regarding marriage or sexual orientation.

(b) The licenses that may not be denied under this section include marriage licenses under IC 31-11 for persons who otherwise qualify in Indiana for a marriage license.

(c) Lawful expression or lawful activity under this section does not include a violation of this article or IC 22-9.5 that may be the basis under a state statute, rule, or ordinance for denial, suspension, revocation, or other disciplinary action related to a permit, registration, certificate, or other license.

SECTION 11. IC 22-9.5-2-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 1.5. "Active duty" has the meaning set forth in IC 22-9-9-1.**

SECTION 12. IC 22-9.5-2-12.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 12.5. "Sexual orientation" has the meaning set forth in IC 22-9-1-3.**

SECTION 13. IC 22-9.5-2-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 14. "Veteran" has the meaning set forth in IC 22-9-1-3.**



1 SECTION 14. IC 22-9.5-3-5 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. This article does
 3 not prohibit a person engaged in the business of furnishing appraisals
 4 of real property from taking into consideration factors other than race,
 5 color, religion, sex, **sexual orientation, active duty status, veteran**
 6 **status**, disability, familial status, or national origin.

7 SECTION 15. IC 22-9.5-5-1 IS AMENDED TO READ AS
 8 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) A person
 9 may not refuse to sell or to rent after the making of a bona fide offer,
 10 refuse to negotiate for the sale or rental of, or otherwise make
 11 unavailable or deny a dwelling to any person because of race, color,
 12 religion, sex, **sexual orientation, active duty status, veteran status**,
 13 familial status, disability, or national origin.

14 (b) A person may not discriminate against any person in the terms,
 15 conditions, or privileges of sale or rental of a dwelling, or in providing
 16 services or facilities in connection with the sale or rental of a dwelling,
 17 because of race, color, religion, sex, **sexual orientation, active duty**
 18 **status, veteran status**, familial status, disability, or national origin.

19 (c) This section does not prohibit discrimination against a person
 20 because the person has been convicted under federal law or the law of
 21 any state of the illegal manufacture or distribution of a controlled
 22 substance.

23 SECTION 16. IC 22-9.5-5-2 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. A person may
 25 not make, print, or publish or cause to be made, printed, or published
 26 any notice, statement, or advertisement with respect to the sale or rental
 27 of a dwelling that indicates any preference, limitation, or discrimination
 28 based on race, color, religion, sex, **sexual orientation, active duty**
 29 **status, veteran status**, disability, familial status, or national origin, or
 30 an intention to make such a preference, limitation, or discrimination.

31 SECTION 17. IC 22-9.5-5-3 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. A person may
 33 not represent to any person because of race, color, religion, sex, **sexual**
 34 **orientation, active duty status, veteran status**, disability, familial
 35 status, or national origin that a dwelling is not available for inspection
 36 for sale or rental when the dwelling is available for inspection.

37 SECTION 18. IC 22-9.5-5-4 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. A person may
 39 not, for profit, induce or attempt to induce a person to sell or rent a
 40 dwelling by representations regarding the entry or prospective entry
 41 into a neighborhood of a person of a particular race, color, religion, sex,
 42 **sexual orientation, active duty status, veteran status**, disability,



1 familial status, or national origin.

2 SECTION 19. IC 22-9.5-5-6 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) As used in
4 this section, "residential real estate related transaction" means the
5 following:

6 (1) Making or purchasing loans or providing other financial
7 assistance:

8 (A) to purchase, construct, improve, repair, or maintain a
9 dwelling; or

10 (B) to secure residential real estate.

11 (2) Selling, brokering, or appraising residential real property.

12 (b) A person whose business includes engaging in residential real
13 estate related transactions may not discriminate against a person in
14 making a real estate related transaction available or in the terms or
15 conditions of a real estate related transaction because of race, color,
16 religion, sex, **sexual orientation, active duty status, veteran status,**
17 disability, familial status, or national origin.

18 SECTION 20. IC 22-9.5-5-7 IS AMENDED TO READ AS
19 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. A person may
20 not deny any person access to, or membership or participation in, a
21 multiple listing service, real estate brokers' organization or other
22 service, organization, or facility relating to the business of selling or
23 renting dwellings, or discriminate against a person in the terms or
24 conditions of access, membership, or participation in such an
25 organization, service, or facility because of race, color, religion, sex,
26 **sexual orientation, active duty status, veteran status,** disability,
27 familial status, or national origin.

28 SECTION 21. IC 22-9.5-8.1-2 IS AMENDED TO READ AS
29 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. In an action filed
30 under section 1 of this chapter, the court may do the following:

31 (1) Award preventive relief, including a permanent or temporary
32 injunction, restraining order, or other order against the person
33 responsible for a violation of this article as necessary to assure the
34 full enjoyment of the rights granted by this article.

35 (2) Award other appropriate relief, including monetary damages,
36 reasonable attorney's fees, and court costs. **However, monetary**
37 **damages may not exceed actual damages for losses related to**
38 **the violation under this article.**

39 (3) To vindicate the public interest, assess a civil penalty against
40 the respondent in an amount that does not exceed the following:

41 (A) Fifty thousand dollars (\$50,000) for a first violation.

42 (B) One hundred thousand dollars (\$100,000) for a second or



1 subsequent violation.

2 SECTION 22. IC 22-9.5-10-1 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. A person
4 commits a Class A misdemeanor if the person, whether or not acting
5 under color of law, by force or threat of force intentionally intimidates
6 or interferes with or attempts to intimidate or interfere with a person:

7 (1) because of the person's race, color, religion, sex, **sexual**
8 **orientation, active duty status, veteran status,** disability,
9 familial status, or national origin and because the person is or has
10 been selling, purchasing, renting, financing, occupying, or
11 contracting or negotiating for the sale, purchase, rental, financing,
12 or occupation of any dwelling, or applying for or participating in
13 a service, organization, or facility relating to the business of
14 selling or renting dwellings; or

15 (2) because the person is or has been, or to intimidate the person
16 from:

17 (A) participating, without discrimination because of race,
18 color, religion, sex, **sexual orientation, active duty status,**
19 **veteran status,** disability, familial status, or national origin, in
20 an activity, a service, an organization, or a facility described in
21 subdivision (1);

22 (B) affording another person opportunity or protection to
23 participate in an activity, a service, an organization, or a
24 facility described in subdivision (1); or

25 (C) lawfully aiding or encouraging other persons to participate,
26 without discrimination because of race, color, religion, sex,
27 **sexual orientation, active duty status, veteran status,**
28 disability, familial status, or national origin, in an activity, a
29 service, an organization, or a facility described in subdivision
30 (1).

31 SECTION 23. IC 34-13-9 IS REPEALED [EFFECTIVE UPON
32 PASSAGE] (Religious Freedom Restoration).

33 SECTION 24. IC 34-28-10 IS ADDED TO THE INDIANA CODE
34 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
35 UPON PASSAGE]:

36 **Chapter 10. Religion, Thought, Speech, and Assembly Claims**

37 **Sec. 1. A court shall use the material burden analysis set forth**
38 **in Price v. State, 622 N.E.2d 954 (Ind. 1993) and City Chapel**
39 **Evangelical Free INC., a/k/a City Chapel Evangelical Free Church**
40 **v. City of South Bend, Indiana, 744 N.E.2d 443 (Ind. 2001) in**
41 **reviewing claims involving the following:**

42 (1) The right to worship under Article 1, Section 2 of the



1 **Constitution of the State of Indiana.**

2 **(2) The right to free exercise and enjoyment of religious**
 3 **opinions and the right of conscience under Article 1, Section**
 4 **3 of the Constitution of the State of Indiana.**

5 **(3) The right to freedom of religion under Article 1, Section 4**
 6 **of the Constitution of the State of Indiana.**

7 **(4) The right to freedom of thought, speech, writing, and**
 8 **printing under Article 1, Section 9 of the Constitution of the**
 9 **State of Indiana.**

10 **(5) The right to assemble under Article 1, Section 31 of the**
 11 **Constitution of the State of Indiana.**

12 **SECTION 25. [EFFECTIVE UPON PASSAGE] (a) The legislative**
 13 **council shall assign the topic of discrimination based on gender**
 14 **identity to an appropriate interim study committee for study**
 15 **during the 2016 interim. The interim study committee may study**
 16 **any issue related to the topic. The interim study committee shall**
 17 **study what uniformly applicable, statewide laws are appropriate**
 18 **for Indiana and exemptions are needed to protect personal privacy,**
 19 **personal modesty, or the free exercise of religious rights or the**
 20 **rights of conscience. The interim study committee to which the**
 21 **topic is assigned shall report to the legislative council its**
 22 **recommendations for legislation designed to aid in the removing of**
 23 **discrimination on the basis of sexual identity.**

24 **(b) This SECTION expires November 1, 2016.**

25 **SECTION 26. An emergency is declared for this act.**



COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 344, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 4, between lines 21 and 22, begin a new paragraph and insert:

"(h) A person providing adoption services or crisis pregnancy services, organized with the primary purpose to encourage the carrying of pregnancies to full term, is exempt from the provisions of this chapter related to sexual orientation.

(i) A nonprofit corporation or association organized with the primary purpose of offering religious-centered programs is exempt from the provisions of this chapter related to sexual orientation."

Page 19, between lines 23 and 24, begin a new paragraph and insert:

"SECTION 23. IC 34-13-9 IS REPEALED [EFFECTIVE UPON PASSAGE] (Religious Freedom Restoration).

SECTION 24. IC 34-28-10 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 10. Religion, Thought, Speech, and Assembly Claims

Sec. 1. A court shall use the material burden analysis set forth in Price v. State, 622 N.E.2d 954 (Ind. 1993) and City Chapel Evangelical Free INC., a/k/a City Chapel Evangelical Free Church v. City of South Bend, Indiana, 744 N.E.2d 443 (Ind. 2001) in reviewing claims involving the following:

- (1) The right to worship under Article 1, Section 2 of the Constitution of the State of Indiana.**
- (2) The right to free exercise and enjoyment of religious opinions and the right of conscience under Article 1, Section 3 of the Constitution of the State of Indiana.**
- (3) The right to freedom of religion under Article 1, Section 4 of the Constitution of the State of Indiana.**
- (4) The right to freedom of thought, speech, writing, and printing under Article 1, Section 9 of the Constitution of the**



State of Indiana.

(5) The right to assemble under Article 1, Section 31 of the Constitution of the State of Indiana."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 344 as introduced.)

LONG, Chairperson

Committee Vote: Yeas 7, Nays 5.

